

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-CT-3114-D

ALAN WADE JOHNSON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

On January 28, 2019, Magistrate Judge Numbers issued a Memorandum and Recommendation (“M&R”) [D.E. 14], and recommended dismissing Alan Wade Johnson’s (“Johnson” or “plaintiff”) civil action under the Federal Torts Claim Act (“FTCA”), 28 U.S.C. § 2672, et seq., for failure to state a claim. On February 5, 2019, Johnson objected to the M&R [D.E. 15].

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond, 416 F.3d at 315 (quotation omitted).

Johnson contends that the commissary at the Federal Correctional Institution in Butner, North Carolina does not sell a sufficient selection of stamps and seeks monetary damages and injunctive relief. This claim, however, falls within the FTCA’s discretionary function exception. See 28 U.S.C.

§ 2680(a); United States v. Gaubert, 499 U.S. 315, 322–25 (1991); United States v. Varig Airlines, 467 U.S. 797, 808, 814 (1984); Calderon v. United States, 123 F.3d 947, 950 (7th Cir. 1997); Janis v. United States, No. 1:06-CV-1613-SEB-JMS, 2009 WL 564207, at *12 (S.D. Ind. Mar. 4, 2009) (unpublished). Thus, the court lacks jurisdiction to hear Johnson’s claim. See Holbrook v. United States, 673 F.3d 341, 345 (4th Cir. 2012); Williams v. United States, 50 F.3d 299, 304–05 (4th Cir. 1995). Accordingly, the court dismisses Johnson’s FTCA complaint.

In sum, the court OVERRULES Johnson’s objections [D.E. 15], ADOPTS the conclusions in the M&R [D.E. 14], and DISMISSES Johnson’s complaint [D.E. 1]. The clerk shall close the case.

SO ORDERED. This 8 day of April 2019.


JAMES C. DEVER III
United States District Judge